

**Executive Summary – Enforcement Matter – Case No. 44603**  
**City of Portland**  
**RN103016416**  
**Docket No. 2012-1472-MWD-E**

**Order Type:**

1660 Agreed Order

**Findings Order Justification:**

N/A

**Media:**

MWD

**Small Business:**

No

**Location(s) Where Violation(s) Occurred:**

City of Portland Plant 1, 1095 Moore Avenue (Farm-to-Market Road 893), 2,000 feet northwest of the intersection of Farm-to-Market Road 893 and U.S. Highway 181, Portland, San Patricio County

**Type of Operation:**

Wastewater treatment facility

**Other Significant Matters:**

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: None

**Texas Register Publication Date:** December 5, 2014

**Comments Received:** No

***Penalty Information***

**Total Penalty Assessed:** \$36,000

**Amount Deferred for Expedited Settlement:** \$7,200

**Amount Deferred for Financial Inability to Pay:** \$0

**Total Paid to General Revenue:** \$0

**Total Due to General Revenue:** \$0

Payment Plan: N/A

**SEP Conditional Offset:** \$28,800

Name of SEP: Coastal Bend Bays & Estuaries Program, Inc. (Third-Party Pre-Approved)

**Compliance History Classifications:**

Person/CN - Satisfactory

Site/RN - Satisfactory

**Major Source:** Yes

**Statutory Limit Adjustment:** N/A

**Applicable Penalty Policy:** September 2011

**Executive Summary – Enforcement Matter – Case No. 44603**  
**City of Portland**  
**RN103016416**  
**Docket No. 2012-1472-MWD-E**

***Investigation Information***

**Complaint Date(s):** N/A  
**Complaint Information:** N/A  
**Date(s) of Investigation:** April 18, 2012  
**Date(s) of NOE(s):** June 28, 2012

***Violation Information***

Failed to comply with permitted effluent limits for *Enterococci*, residual chlorine, and 2-hour peak flow [TEX. WATER CODE § 26.121(a)(1), 30 TEX. ADMIN. CODE § 305.125(1), and Texas Pollutant Discharge Elimination System Permit No. WQ0010478001, Effluent Limitations and Monitoring Requirements Nos. 1 and 2].

***Corrective Actions/Technical Requirements***

**Corrective Action(s) Completed:**

By June 30, 2014, the Respondent improved the chlorine contact chamber to achieve compliance with the permitted effluent limits.

**Technical Requirements:**

The Order will require the Respondent to implement and complete a Supplemental Environmental Project ("SEP"). (See Attachment A)

***Litigation Information***

**Date Petition(s) Filed:** N/A  
**Date Answer(s) Filed:** N/A  
**SOAH Referral Date:** N/A  
**Hearing Date(s):** N/A  
**Settlement Date:** N/A

***Contact Information***

**TCEQ Attorney:** N/A  
**TCEQ Enforcement Coordinator:** Cheryl Thompson, Enforcement Division, Enforcement Team 3, MC R-04, (817) 588-5886; Candy Garrett, Enforcement Division, MC 219, (512) 239-1456  
**TCEQ SEP Coordinator:** Stuart Beckley, SEP Coordinator, Enforcement Division, MC 219, (512) 239-3565  
**Respondent:** David Krebs, Mayor, City of Portland, 1900 Billy G. Webb Drive, Portland, Texas 78374  
Randy L. Wright, City Manager, City of Portland, 1900 Billy G. Webb Drive, Portland, Texas 78374  
**Respondent's Attorney:** Mary Reagan, Partner, McGinnis Lochridge, 600 North Congress Avenue, Suite 2100, Austin, Texas 78701

**Attachment A**  
**Docket Number: 2012-1472-MWD-E**  
**SUPPLEMENTAL ENVIRONMENTAL PROJECT**

<b>Respondent:</b>	<b>City of Portland</b>
<b>Penalty Amount:</b>	<b>Twenty-Eight Thousand Eight Hundred Dollars (\$28,800)</b>
<b>SEP Offset Amount:</b>	<b>Twenty-Eight Thousand Eight Hundred Dollars (\$28,800)</b>
<b>Type of SEP:</b>	<b>Contribution to a Third-Party Pre-Approved SEP</b>
<b>Third-Party Administrator:</b>	<b>Coastal Bend Bays &amp; Estuaries Program, Inc.</b>
<b>Project Name:</b>	<b><i>Violet Andrews Park Erosion Control and Habitat Restoration</i></b>
<b>Location of SEP:</b>	<b>San Patricio County; Nueces Rio Grande River Basin and Gulf Coast Aquifer</b>

The Texas Commission on Environmental Quality (“TCEQ”) agrees to offset the administrative penalty amount assessed in this Agreed Order for the Respondent to contribute to a Supplemental Environmental Project (“SEP”). The offset is equal to the SEP Offset Amount set forth above and is conditioned upon completion of the project in accordance with the terms of this Attachment A.

**1. Project Description**

**a. Project**

The Respondent shall contribute the SEP Offset Amount to the Third-Party Administrator named above. The contribution will be to the **Coastal Bend Bays & Estuaries Program, Inc.** for the *Violet Andrews Park Erosion Control and Habitat Restoration* project. The contribution will be used in accordance with the SEP between the Third-Party Administrator and the TCEQ (the “Project”). Specifically, the SEP Offset Amount will be used to develop a landscape design, install a drip irrigation system, prepare the restoration area for planting, and plant xeriscape species and hardy native trees, shrubs, forbs, and grasses. The planting will serve to cover and bind the soil with their root systems thereby reducing soil erosion as well as provide fruit, nectar, seeds, and other bird foraging habitat. The planting will be done along both sides of an existing walking path for approximately 485 linear feet, for a total distance of 970 linear feet. The areas to be planted will range from 20 to 50 feet in width, covering approximately 0.378 acres. The variety of native and xeriscape plants to be used will include Retama, Southern Live Oak, Huisache, Red Bay, Black Willow, Wild Olive, Agarita, Colima, Spiny Hackberry, Texas Lantana, Turks Cap, Wax Myrtle, vetches, mallows, Partridge Pea, and native grasses such as Virginia Dropseed and Coastal Salt Grass. The Third-Party Administrator shall ensure that the drip irrigation system is installed in compliance with TCEQ rules regarding licensed irrigators and irrigation systems.

City of Portland  
Agreed Order - Attachment A

After the restoration is complete, the Third-Party Administrator shall purchase and install two weather resistant signs or kiosks which will provide information concerning the environmentally beneficial aspects of the area/project and must include the language, "This habitat restoration project was performed with penalty monies from a Texas Commission on Environmental Quality Enforcement action." In its final report, the Third-Party Administrator shall provide before and after pictures of the restored areas as well as photographs of the signs or kiosks. The SEP will be done in accordance with all federal, state, and local environmental laws and regulations.

All dollars contributed will be used solely for the direct cost of implementing the Project, including, but not limited to supplies, materials, and equipment. Any portion of this contribution that is not spent on the specifically identified SEP may, at the discretion of the Executive Director ("ED"), be applied to another pre-approved SEP.

The Respondent's signature affixed to this Agreed Order certifies that the Respondent has no prior commitment to make this contribution and that it is being contributed solely in an effort to settle this enforcement action. The Respondent shall not profit in any manner from this SEP.

b. Environmental Benefit

The Project will reduce and prevent pollution by stabilizing the unvegetated sandy substrate with native forbs, grasses, shrubs, and tree species, by enhancing the ecologically important native plant communities, by providing important resident and migratory bird habitat, by reducing soil erosion and sedimentation, and by providing opportunities for public awareness of environmental matters.

Many areas in the park site are devoid of vegetation, including groundcover. As a result, there is evidence of wind and rainfall-related erosion. Native trees, shrubs, and forbs, and grasses provide extremely important habitat for resident birds, insects, reptiles, and mammals, but their value as a stopover habitat for migrating song birds is immeasurable. These woodland areas, such as the vegetation occurring throughout the park's bluff located along the Texas Coastal Bend's bay margins, have historically and continue to be used as important refuges for migrating birds as they make landfall during their migratory trek to their Canadian and North American breeding grounds. This SEP will result in the restoration and enhancements of ecologically important habitat located on critical migratory pathways, the reduction of erosion and sedimentation, which improved water quality, and increased public awareness of environmental matters.

b. Minimum Expenditure

The Respondent shall contribute at least the SEP Offset Amount to the Third-Party Administrator and comply with all other provisions of this SEP.

## **2. Performance Schedule**

Within 30 days after the effective date of this Agreed Order, the Respondent must contribute the SEP Offset Amount to the Third-Party Administrator. The Respondent shall make the check payable to **Coastal Bend Bays & Estuaries Program SEP** and shall mail the contribution with a copy of the Agreed Order to:

Coastal Bend Bays & Estuaries Program, Inc.  
Attention: Leo Trevino, Deputy Executive Director  
1305 North Shoreline Boulevard, Suite 205  
Corpus Christi, Texas 78401-1500

## **3. Records and Reporting**

Concurrent with the payment of the SEP Offset Amount, the Respondent shall provide the Enforcement SEP Coordinator with a copy of the check and transmittal letter indicating full payment of the SEP Offset Amount to the Third-Party Administrator. The Respondent shall mail a copy of the check and transmittal letter to:

Texas Commission on Environmental Quality  
Enforcement Division  
Attention: SEP Coordinator, MC 219  
P.O. Box 13087  
Austin, Texas 78711-3087

## **4. Failure to Fully Perform**

If the Respondent does not perform its obligations under this Attachment A, including full expenditure of the SEP Offset Amount and submittal of the required reporting described in Sections 2 and 3 above, the ED may require immediate payment of all or part of the SEP Offset Amount.

In the event the ED determines that the Respondent failed to fully implement and complete the Project, the Respondent shall remit payment for all or a portion of the SEP Offset Amount, as determined by the ED, and as set forth in the attached Agreed Order. After receiving notice of failure to complete the SEP, the Respondent shall include the docket number of the attached Agreed Order and a note that the enclosed payment is for the reimbursement of a SEP, shall make the check payable to "Texas Commission on Environmental Quality," and shall mail it to:

City of Portland  
Agreed Order - Attachment A

Texas Commission on Environmental Quality  
Litigation Division  
Attention: SEP Coordinator, MC 175  
P.O. Box 13087  
Austin, Texas 78711-3087

**5. Publicity**

Any public statements concerning this SEP and/or project, made by or on behalf of the Respondent must include a clear statement that **the project was performed as part of the settlement of an enforcement action brought by the TCEQ**. Such statements include advertising, public relations, and press releases.

**6. Clean Texas Program**

The Respondent shall not include this SEP in any application made to TCEQ under the "Clean Texas" (or any successor) program(s). Similarly, the Respondent may not seek recognition for this contribution in any other state or federal regulatory program.

**7. Other SEPs by TCEQ or Other Agencies**

The SEP Offset Amount identified in this Attachment A and in the attached Agreed Order has not been, and shall not be, included as a SEP for the Respondent under any other Agreed Order negotiated with the TCEQ or any other agency of the state or federal government.



# Penalty Calculation Worksheet (PCW)

Policy Revision 3 (September 2011)

PCW Revision August 3, 2011

**TCEQ**

<b>DATES</b>	<b>Assigned</b>	16-Jul-2012	<b>Screening</b>	25-Jul-2012	<b>EPA Due</b>	
	<b>PCW</b>	14-Oct-2014				

## RESPONDENT/FACILITY INFORMATION

<b>Respondent</b>	City of Portland		
<b>Reg. Ent. Ref. No.</b>	RN103016416		
<b>Facility/Site Region</b>	14-Corpus Christi	<b>Major/Minor Source</b>	Major

## CASE INFORMATION

<b>Enf./Case ID No.</b>	44603	<b>No. of Violations</b>	2
<b>Docket No.</b>	2012-1472-MWD-E	<b>Order Type</b>	1660
<b>Media Program(s)</b>	Water Quality	<b>Government/Non-Profit</b>	Yes
<b>Multi-Media</b>		<b>Enf. Coordinator</b>	Cheryl Thompson
		<b>EC's Team</b>	Enforcement Team 3
<b>Admin. Penalty \$ Limit Minimum</b>	\$0	<b>Maximum</b>	\$25,000

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b>	\$22,500
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## ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

<b>Compliance History</b>	60.0% Enhancement	<b>Subtotals 2, 3, &amp; 7</b>	\$13,500
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Notes

Enhancement for 11 months of self-reported effluent violations and one NOV with same/similar violations.

<b>Culpability</b>	No	0.0% Enhancement	<b>Subtotal 4</b>	\$0
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Notes

The Respondent does not meet the culpability criteria.

<b>Good Faith Effort to Comply Total Adjustments</b>	<b>Subtotal 5</b>	\$0
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<b>Economic Benefit</b>	0.0% Enhancement*	<b>Subtotal 6</b>	\$0
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Total EB Amounts	\$491,807
Approx. Cost of Compliance	\$3,242,000

\*Capped at the Total EB \$ Amount

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	\$36,000
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	0.0%	<b>Adjustment</b>	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

<b>Final Penalty Amount</b>	\$36,000
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<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	\$36,000
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<b>DEFERRAL</b>	20.0% Reduction	<b>Adjustment</b>	-\$7,200
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes

Deferral offered for expedited settlement.

<b>PAYABLE PENALTY</b>	\$28,800
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Screening Date 25-Jul-2012

Docket No. 2012-1472-MWD-E

PCW

Respondent City of Portland

Policy Revision 3 (September 2011)

Case ID No. 44603

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN103016416

Media [Statute] Water Quality

Enf. Coordinator Cheryl Thompson

## Compliance History Worksheet

## &gt;&gt; Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action ( <i>number of NOVs meeting criteria</i> )	12	60%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability ( <i>number of orders meeting criteria</i> )	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government ( <i>number of judgments or consent decrees meeting criteria</i> )	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government ( <i>number of counts</i> )	0	0%
Emissions	Chronic excessive emissions events ( <i>number of events</i> )	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which notices were submitted</i> )	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which violations were disclosed</i> )	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 60%

## &gt;&gt; Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

## &gt;&gt; Compliance History Person Classification (Subtotal 7)

Satisfactory Performer

Adjustment Percentage (Subtotal 7) 0%

## &gt;&gt; Compliance History Summary

Compliance  
History  
Notes

Enhancement for 11 months of self-reported effluent violations and one NOV with same/similar violations.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, &amp; 7) 60%

## &gt;&gt; Final Compliance History Adjustment

Final Adjustment Percentage \*capped at 100% 60%



Screening Date 25-Jul-2012  
Respondent City of Portland  
Case ID No. 44603  
Reg. Ent. Reference No. RN103016416  
Media [Statute] Water Quality  
Enf. Coordinator Cheryl Thompson  
Violation Number 1

Docket No. 2012-1472-MWD-E

PCW

Policy Revision 3 (September 2011)

PCW Revision August 3, 2011

Rule Cite(s)

Tex. Water Code § 26.121(a)(1), 30 Tex. Admin. Code § 305.125(1), and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0010478001, Effluent Limitations and Monitoring Requirements No. 1

Violation Description

Failed to comply with permitted effluent limits, as documented during an investigation conducted on April 18, 2012, and shown in the attached violation table.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual		x	
Potential			

Percent 30.0%

>> Programmatic Matrix

Falsification			
	Major	Moderate	Minor

Percent 0.0%

Matrix Notes

Enterococci was evaluated to determine whether the discharged amounts of pollutants exceeded levels protective of human health and the environment. As a result of these discharges, human health or the environment has been exposed to a significant amount of contaminants which do not exceed levels protective of human health or environmental receptors.

Adjustment \$17,500

\$7,500

Violation Events

Number of Violation Events 2

61 Number of violation days

mark only one with an x	daily	
	weekly	
	monthly	x
	quarterly	
	semiannual	
	annual	
	single event	

Violation Base Penalty \$15,000

Two monthly events are recommended for the months of May 2012 and September 2012.

Good Faith Efforts to Comply

0.0% Reduction

\$0

Before NOV NOV to EDRP/Settlement Offer

Extraordinary		
Ordinary		
N/A	x	(mark with x)

Notes

The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$15,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$491,807

Violation Final Penalty Total \$24,000

This violation Final Assessed Penalty (adjusted for limits) \$24,000

# Economic Benefit Worksheet

**Respondent** City of Portland  
**Case ID No.** 44603  
**Reg. Ent. Reference No.** RN103016416  
**Media** Water Quality  
**Violation No.** 1

Percent Interest	Years of Depreciation
5.0	15

Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
<b>Item Description</b> No commas or \$						

## Delayed Costs

Equipment			0.00	\$0	\$0	\$0
Buildings			0.00	\$0	\$0	\$0
Other (as needed)			0.00	\$0	\$0	\$0
Engineering/construction	\$3,242,000	30-Apr-2012	30-Jun-2014	2.17	\$23,419	\$468,388
Land			0.00	\$0	n/a	\$0
Record Keeping System			0.00	\$0	n/a	\$0
Training/Sampling			0.00	\$0	n/a	\$0
Remediation/Disposal			0.00	\$0	n/a	\$0
Permit Costs			0.00	\$0	n/a	\$0
Other (as needed)			0.00	\$0	n/a	\$0

Notes for DELAYED costs

The delayed costs include the engineering and construction costs for improvements to be made to the Facility in order to improve the quality of the effluent, calculated from the date of the first effluent limit exceedance to the date of compliance.

## Avoided Costs

**ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)**

Disposal			0.00	\$0	\$0	\$0
Personnel			0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling			0.00	\$0	\$0	\$0
Supplies/equipment			0.00	\$0	\$0	\$0
Financial Assurance [2]			0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]			0.00	\$0	\$0	\$0
Other (as needed)			0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$3,242,000

**TOTAL**

\$491,807

Screening Date 25-Jul-2012

Docket No. 2012-1472-MWD-E

PCW

Respondent City of Portland

Policy Revision 3 (September 2011)

Case ID No. 44603

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN103016416

Media [Statute] Water Quality

Enf. Coordinator Cheryl Thompson

Violation Number 2

Rule Cite(s)

Tex. Water Code § 26.121(a)(1), 30 Tex. Admin. Code § 305.125(1), and TPDES Permit No. WQ0010478001, Effluent Limitations and Monitoring Requirements Nos. 1 and 2

Violation Description

Failed to comply with permitted effluent limits, as documented during an investigation conducted on April 18, 2012, and shown in the attached violation table.

Base Penalty \$25,000

## &gt;&gt; Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			X
Potential			

Percent 15.0%

## &gt;&gt; Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0.0%

Matrix Notes

Enterococci, chlorine residual and flow were evaluated to determine whether the discharged amounts of pollutants exceeded levels protective of human health and the environment. As a result of these discharges, human health or the environment has been exposed to an insignificant amount of contaminants which do not exceed levels protective of human health or environmental receptors.

Adjustment \$21,250

\$3,750

## Violation Events

Number of Violation Events 2

122 Number of violation days

mark only one with an x	daily	
	weekly	
	monthly	
	quarterly	X
	semiannual	
	annual	
	single event	

Violation Base Penalty \$7,500

Two quarterly events are recommended, calculated for the quarters containing the months of April 2012 and June through August 2012.

## Good Faith Efforts to Comply

0.0% Reduction

\$0

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	X	(mark with x)

Notes

The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$7,500

## Economic Benefit (EB) for this violation

## Statutory Limit Test

Estimated EB Amount \$0

Violation Final Penalty Total \$12,000

This violation Final Assessed Penalty (adjusted for limits) \$12,000

# Economic Benefit Worksheet

Respondent City of Portland  
 Case ID No. 44603  
 Reg. Ent. Reference No. RN103016416  
 Media Water Quality  
 Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

## Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

The delayed costs associated with this violation are included in violation no. 1.

## Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$0

TOTAL

\$0

City of Portland  
 TPDES Permit No. WQ0010478001  
 Docket No. 2012-1472-MWD-E

	Enterococci Daily Avg.	Enterococci Daily Max.	Two-Hour Peak Flow	Chlorine Residual Max. Daily Grab
	Limit = 14 CFU/100 mL	Limit = 35 CFU/100 mL	Limit = 5,208 gpm	Limit = 0.1 mg/L
<b>April 2012</b>	c	c	6,134	0.16
<b>May 2012</b>	47.25	220	c	c
<b>June 2012</b>	30.20	160	c	c
<b>July 2012</b>	33.91	52	c	c
<b>August 2012</b>	17.50	41	c	c
<b>September 2012</b>	44.91	320	c	c

Avg. = average  
 mg/L = milligrams per liter  
 gpm = gallons per minute

Max. = maximum  
 CFU = colony forming units

c = compliant  
 mL = milliliters



The TCEQ is committed to accessibility.

To request a more accessible version of this report, please contact the TCEQ Help Desk at (512) 239-4357.



## TCEQ Compliance History Report

**PUBLISHED** Compliance History Report for CN600336150, RN103016416, Rating Year 2012 which includes Compliance History (CH) components from September 1, 2007, through August 31, 2012.

**Customer, Respondent, or Owner/Operator:** CN600336150, City of Portland

**Classification:** SATISFACTORY

**Rating:** 3.10

**Regulated Entity:** RN103016416, CITY OF PORTLAND PLANT 1

**Classification:** SATISFACTORY

**Rating:** 5.18

**Complexity Points:** 6

**Repeat Violator:** NO

**CH Group:** 08 - Sewage Treatment Facilities

**Location:** LOCATED AT 1095 MOORE AVENUE (FM 893), 2000 FEET NORTHWEST OF THE INTERSECTION OF FM 893 AND US HWY 181, PORTLAND, SAN PATRICIO COUNTY, TX

**TCEQ Region:** REGION 14 - CORPUS CHRISTI

**ID Number(s):**

**WASTEWATER PERMIT** WQ0010478001

**WASTEWATER EPA ID** TX0055433

**SLUDGE REGISTRATION** 21883

**WASTEWATER LICENSING LICENSE** WQ0010478001

**Compliance History Period:** September 01, 2007 to August 31, 2012

**Rating Year:** 2012

**Rating Date:** 09/01/2012

**Date Compliance History Report Prepared:** November 26, 2012

**Agency Decision Requiring Compliance History:** Enforcement

**Component Period Selected:** November 05, 2007 to November 05, 2012

**TCEQ Staff Member to Contact for Additional Information Regarding This Compliance History.**

**Name:** Stephen Thompson

**Phone:** (512) 239-2558

**Site and Owner/Operator History:**

- |                                                                                                    |     |
|----------------------------------------------------------------------------------------------------|-----|
| 1) Has the site been in existence and/or operation for the full five year compliance period?       | YES |
| 2) Has there been a (known) change in ownership/operator of the site during the compliance period? | NO  |
| 3) If YES for #2, who is the current owner/operator?                                               | N/A |
| 4) If YES for #2, who was/were the prior owner(s)/operator(s)?                                     | N/A |
| 5) If YES, when did the change(s) in owner or operator occur?                                      | N/A |

**Components (Multimedia) for the Site Are Listed in Sections A - J**

**A. Final Orders, court judgments, and consent decrees:**

N/A

**B. Criminal convictions:**

N/A

**C. Chronic excessive emissions events:**

N/A

**D. The approval dates of investigations (CCEDS Inv. Track. No.):**

Item 1	November 12, 2007	(622008)
Item 2	December 13, 2007	(622009)
Item 3	February 12, 2008	(673876)
Item 4	March 13, 2008	(673877)

Item 5	April 10, 2008	(673878)
Item 6	May 09, 2008	(692130)
Item 7	July 09, 2008	(692132)
Item 8	July 22, 2008	(692131)
Item 9	August 18, 2008	(688298)
Item 10	September 08, 2008	(713210)
Item 11	October 13, 2008	(713211)
Item 12	October 29, 2008	(713212)
Item 13	November 14, 2008	(729341)
Item 14	December 11, 2008	(729342)
Item 15	February 12, 2009	(752530)
Item 16	March 10, 2009	(752531)
Item 17	April 13, 2009	(752532)
Item 18	May 13, 2009	(770174)
Item 19	May 14, 2009	(770173)
Item 20	August 24, 2009	(810093)
Item 21	September 16, 2009	(810094)
Item 22	October 08, 2009	(810095)
Item 23	November 11, 2009	(810096)
Item 24	December 15, 2009	(810097)
Item 25	February 11, 2010	(810091)
Item 26	March 12, 2010	(832789)
Item 27	April 09, 2010	(832790)
Item 28	May 11, 2010	(832791)
Item 29	June 09, 2010	(861370)
Item 30	September 16, 2010	(874575)
Item 31	November 12, 2010	(888630)
Item 32	December 14, 2010	(896979)
Item 33	December 20, 2010	(888629)
Item 34	February 02, 2011	(902905)
Item 35	February 15, 2011	(909771)
Item 36	March 09, 2011	(927080)
Item 37	April 13, 2011	(927081)
Item 38	May 18, 2011	(938701)

#### **E. Written notices of violations (NOV) (CCEDS Inv. Track. No.):**

A notice of violation represents a written allegation of a violation of a specific regulatory requirement from the commission to a regulated entity. A notice of violation is not a final enforcement action, nor proof that a violation has actually occurred.

1	Date:	11/28/2011	(968556)	CN600336150
	Self Report?	NO		Classification: Moderate
	Citation:	2D TWC Chapter 26, SubChapter A 26.121(a)(1) 30 TAC Chapter 305, SubChapter F 305.125(1) Effluent Lim. And Monitoring Req. No. 1 PERMIT		
	Description:	Failed to comply with the effluent limitations and monitoring requirements specified in the permit.		
	Self Report?	NO		Classification: Moderate
	Citation:	30 TAC Chapter 305, SubChapter F 305.125(1) Monitoring and Rep. Req. No. 7(c) PERMIT		
	Description:	Failed to report any effluent violation that deviates from the permitted effluent limitation by more than 40% in writing to the Region Office and the Enforcement Division within 5 working days of becoming aware of the noncompliance.		
	Self Report?	NO		Classification: Moderate
	Citation:	2D TWC Chapter 26, SubChapter A 26.121(a)(1) Permit Conditions 2(g) PERMIT		
	Description:	Failed to prevent the unauthorized discharge of sewage, municipal waste, recreational waste, agricultural waste, or industrial waste into or adjacent to any water in the state.		
	Self Report?	NO		Classification: Moderate
	Citation:	30 TAC Chapter 305, SubChapter F 305.125(1) Operational Req. No. 1 PERMIT		
	Description:	Failed to ensure the facility and all of its systems of collection, treatment, and disposal are properly operated and maintained.		
	Self Report?	NO		Classification: Minor
	Citation:	30 TAC Chapter 305, SubChapter F 305.125(1) Operational Req. No. 1 PERMIT		



Description: Failed to ensure the facility and all of its systems of collection, treatment, and disposal are properly operated and maintained.

2	Date: 11/30/2011 (984997)	CN600336150	
	Self Report? YES	Classification: Moderate	
	Citation: 2D TWC Chapter 26, SubChapter A 26.121(a) 30 TAC Chapter 305, SubChapter F 305.125(1)		
	Description: Failure to meet the limit for one or more permit parameter		
3	Date: 12/31/2011 (991286)	CN600336150	
	Self Report? YES	Classification: Moderate	
	Citation: 2D TWC Chapter 26, SubChapter A 26.121(a) 30 TAC Chapter 305, SubChapter F 305.125(1)		
	Description: Failure to meet the limit for one or more permit parameter		
4	Date: 01/31/2012 (998651)	CN600336150	
	Self Report? YES	Classification: Moderate	
	Citation: 2D TWC Chapter 26, SubChapter A 26.121(a) 30 TAC Chapter 305, SubChapter F 305.125(1)		
	Description: Failure to meet the limit for one or more permit parameter		
5	Date: 02/29/2012 (1004169)	CN600336150	
	Self Report? YES	Classification: Moderate	
	Citation: 2D TWC Chapter 26, SubChapter A 26.121(a) 30 TAC Chapter 305, SubChapter F 305.125(1)		
	Description: Failure to meet the limit for one or more permit parameter		
6	Date: 03/31/2012 (1010736)	CN600336150	
	Self Report? YES	Classification: Moderate	
	Citation: 2D TWC Chapter 26, SubChapter A 26.121(a) 30 TAC Chapter 305, SubChapter F 305.125(1)		
	Description: Failure to meet the limit for one or more permit parameter		
7	Date: 04/30/2012 (1024885)	CN600336150	
	Self Report? YES	Classification: Moderate	
	Citation: 2D TWC Chapter 26, SubChapter A 26.121(a) 30 TAC Chapter 305, SubChapter F 305.125(1)		
	Description: Failure to meet the limit for one or more permit parameter		
8	Date: 05/31/2012 (1024886)	CN600336150	
	Self Report? YES	Classification: Moderate	
	Citation: 2D TWC Chapter 26, SubChapter A 26.121(a) 30 TAC Chapter 305, SubChapter F 305.125(1)		
	Description: Failure to meet the limit for one or more permit parameter		
9	Date: 06/30/2012 (1032232)	CN600336150	
	Self Report? YES	Classification: Moderate	
	Citation: 2D TWC Chapter 26, SubChapter A 26.121(a) 30 TAC Chapter 305, SubChapter F 305.125(1)		
	Description: Failure to meet the limit for one or more permit parameter		
10	Date: 07/31/2012	CN600336150	
	Self Report? YES	Classification: Moderate	
	Citation: 2D TWC Chapter 26, SubChapter A 26.121(a) 30 TAC Chapter 305, SubChapter F 305.125(1)		
	Description: Failure to meet the limit for one or more permit parameter		
11	Date: 08/31/2012	CN600336150	
	Self Report? YES	Classification: Moderate	
	Citation: 2D TWC Chapter 26, SubChapter A 26.121(a) 30 TAC Chapter 305, SubChapter F 305.125(1)		
	Description: Failure to meet the limit for one or more permit parameter		
12	Date: 09/30/2012	CN600336150	
	Self Report? YES	Classification: Moderate	
	Citation: 2D TWC Chapter 26, SubChapter A 26.121(a) 30 TAC Chapter 305, SubChapter F 305.125(1)		
	Description: Failure to meet the limit for one or more permit parameter		

**F. Environmental audits:**

N/A

**G. Type of environmental management systems (EMSs):**

N/A

**H. Voluntary on-site compliance assessment dates:**

N/A

**I. Participation in a voluntary pollution reduction program:**

N/A

**J. Early compliance:**

N/A

**Sites Outside of Texas:**

N/A

# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
CITY OF PORTLAND  
RN103016416**

**§ BEFORE THE  
§  
§ TEXAS COMMISSION ON  
§  
§ ENVIRONMENTAL QUALITY**

## **AGREED ORDER DOCKET NO. 2012-1472-MWD-E**

### **I. JURISDICTION AND STIPULATIONS**

On \_\_\_\_\_, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding the City of Portland ("Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent, represented by Mary Reagan of the law firm of McGinnis Lochridge, together stipulate that:

1. The Respondent owns and operates a wastewater treatment facility at 1095 Moore Avenue (Farm-to-Market Road 893), 2,000 feet northwest of the intersection of Farm-to-Market Road 893 and United States Highway 181 in Portland, San Patricio County, Texas (the "Facility").
2. The Respondent has discharged municipal waste into or adjacent to any water in the state under TEX. WATER CODE ch. 26
3. The Executive Director and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about July 3, 2012.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of Thirty-Six Thousand Dollars (\$36,000) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Seven Thousand Two Hundred Dollars (\$7,200) of the administrative penalty is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the Respondent fails to timely and

satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent to pay all or part of the deferred penalty. Twenty-Eight Thousand Eight Hundred Dollars (\$28,800) shall be conditionally offset by the Respondent's completion of a Supplemental Environmental Project ("SEP").

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director and the Respondent agree on a settlement of the matters alleged in this enforcement action, subject to final approval in accordance with 30 TEX. ADMIN. CODE § 70.10(a).
9. The Executive Director recognizes that by June 30, 2014, the Respondent improved the chlorine contact chamber at the Facility to achieve compliance with the permitted effluent limits.
10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

## **II. ALLEGATIONS**

As owner and operator of the Facility, the Respondent is alleged to have failed to comply with permitted effluent limits, as documented during an investigation conducted on April 18, 2012, in violation of TEX. WATER CODE § 26.121(a)(1), 30 TEX. ADMIN. CODE § 305.125(1), and Texas Pollutant Discharge Elimination System Permit No. WQ0010478001, Effluent Limitations and Monitoring Requirements Nos. 1 and 2, as shown in the table below:

	Enterococci Daily Avg.	Enterococci Daily Max.	Two-Hour Peak Flow	Chlorine Residual Max. Daily Grab
	Limit = 14 CFU/100 mL	Limit = 35 CFU/100 mL	Limit = 5,208 gpm	Limit = 0.1 mg/L
<b>April 2012</b>	c	c	6,134	0.16
<b>May 2012</b>	47.25	220	c	c
<b>June 2012</b>	30.20	160	c	c
<b>July 2012</b>	33.91	52	c	c
<b>August 2012</b>	17.50	41	c	c
<b>September 2012</b>	44.91	320	c	c

Avg. = average  
mg/L = milligrams per liter  
gpm = gallons per minute

Max. = maximum  
CFU = colony forming units

c = compliant  
mL = milliliters

### III. DENIALS

The Respondent generally denies each allegation in Section II ("Allegations").

### IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: City of Portland, Docket No. 2012-1472-MWD-E" to:

Financial Administration Division, Revenue Operations Section  
Attention: Cashier's Office, MC 214  
Texas Commission on Environmental Quality  
P.O. Box 13088  
Austin, Texas 78711-3088

2. The Respondent shall implement and complete a SEP in accordance with TEX. WATER CODE § 7.067. As set forth in Section I, Paragraph 6 above, Twenty-Eight Thousand Eight Hundred Dollars (\$28,800) of the assessed administrative penalty shall be offset with the condition that the SEP defined in Attachment A, incorporated herein by reference, is implemented by the Respondent. The Respondent's obligation to pay the

offset portion of the assessed administrative penalty shall be discharged upon final completion of all provisions of the SEP agreement.

3. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
4. If the Respondent fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
7. This Agreed Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Agreed Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Agreed Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms "electronic transmission", "owner", "person", "writing", and "written" shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.
8. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier.

## SIGNATURE PAGE

### TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

\_\_\_\_\_  
For the Commission

  
For the Executive Director


2/17/15  
Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.

  
Signature

10/24/2014  
Date

RANDY L. WRIGHT  
Name (Printed or typed)  
Authorized Representative of  
City of Portland

CITY MANAGER  
Title

**Instructions:** Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenue Operations Section at the address in Section IV, Paragraph 1 of this Agreed Order.





**Attachment A**  
**Docket Number: 2012-1472-MWD-E**  
**SUPPLEMENTAL ENVIRONMENTAL PROJECT**

<b>Respondent:</b>	<b>City of Portland</b>
<b>Penalty Amount:</b>	<b>Twenty-Eight Thousand Eight Hundred Dollars (\$28,800)</b>
<b>SEP Offset Amount:</b>	<b>Twenty-Eight Thousand Eight Hundred Dollars (\$28,800)</b>
<b>Type of SEP:</b>	<b>Contribution to a Third-Party Pre-Approved SEP</b>
<b>Third-Party Administrator:</b>	<b>Coastal Bend Bays &amp; Estuaries Program, Inc.</b>
<b>Project Name:</b>	<b><i>Violet Andrews Park Erosion Control and Habitat Restoration</i></b>
<b>Location of SEP:</b>	<b>San Patricio County; Nueces Rio Grande River Basin and Gulf Coast Aquifer</b>

The Texas Commission on Environmental Quality (“TCEQ”) agrees to offset the administrative penalty amount assessed in this Agreed Order for the Respondent to contribute to a Supplemental Environmental Project (“SEP”). The offset is equal to the SEP Offset Amount set forth above and is conditioned upon completion of the project in accordance with the terms of this Attachment A.

**1. Project Description**

**a. Project**

The Respondent shall contribute the SEP Offset Amount to the Third-Party Administrator named above. The contribution will be to the **Coastal Bend Bays & Estuaries Program, Inc.** for the *Violet Andrews Park Erosion Control and Habitat Restoration* project. The contribution will be used in accordance with the SEP between the Third-Party Administrator and the TCEQ (the “Project”). Specifically, the SEP Offset Amount will be used to develop a landscape design, install a drip irrigation system, prepare the restoration area for planting, and plant xeriscape species and hardy native trees, shrubs, forbs, and grasses. The planting will serve to cover and bind the soil with their root systems thereby reducing soil erosion as well as provide fruit, nectar, seeds, and other bird foraging habitat. The planting will be done along both sides of an existing walking path for approximately 485 linear feet, for a total distance of 970 linear feet. The areas to be planted will range from 20 to 50 feet in width, covering approximately 0.378 acres. The variety of native and xeriscape plants to be used will include Retama, Southern Live Oak, Huisache, Red Bay, Black Willow, Wild Olive, Agarita, Colima, Spiny Hackberry, Texas Lantana, Turks Cap, Wax Myrtle, vetches, mallows, Partridge Pea, and native grasses such as Virginia Dropseed and Coastal Salt Grass. The Third-Party Administrator shall ensure that the drip irrigation system is installed in compliance with TCEQ rules regarding licensed irrigators and irrigation systems.

City of Portland  
Agreed Order - Attachment A

After the restoration is complete, the Third-Party Administrator shall purchase and install two weather resistant signs or kiosks which will provide information concerning the environmentally beneficial aspects of the area/project and must include the language, "This habitat restoration project was performed with penalty monies from a Texas Commission on Environmental Quality Enforcement action." In its final report, the Third-Party Administrator shall provide before and after pictures of the restored areas as well as photographs of the signs or kiosks. The SEP will be done in accordance with all federal, state, and local environmental laws and regulations.

All dollars contributed will be used solely for the direct cost of implementing the Project, including, but not limited to supplies, materials, and equipment. Any portion of this contribution that is not spent on the specifically identified SEP may, at the discretion of the Executive Director ("ED"), be applied to another pre-approved SEP.

The Respondent's signature affixed to this Agreed Order certifies that the Respondent has no prior commitment to make this contribution and that it is being contributed solely in an effort to settle this enforcement action. The Respondent shall not profit in any manner from this SEP.

b. Environmental Benefit

The Project will reduce and prevent pollution by stabilizing the unvegetated sandy substrate with native forbs, grasses, shrubs, and tree species, by enhancing the ecologically important native plant communities, by providing important resident and migratory bird habitat, by reducing soil erosion and sedimentation, and by providing opportunities for public awareness of environmental matters.

Many areas in the park site are devoid of vegetation, including groundcover. As a result, there is evidence of wind and rainfall-related erosion. Native trees, shrubs, and forbs, and grasses provide extremely important habitat for resident birds, insects, reptiles, and mammals, but their value as a stopover habitat for migrating song birds is immeasurable. These woodland areas, such as the vegetation occurring throughout the park's bluff located along the Texas Coastal Bend's bay margins, have historically and continue to be used as important refuges for migrating birds as they make landfall during their migratory trek to their Canadian and North American breeding grounds. This SEP will result in the restoration and enhancements of ecologically important habitat located on critical migratory pathways, the reduction of erosion and sedimentation, which improved water quality, and increased public awareness of environmental matters.

b. Minimum Expenditure

The Respondent shall contribute at least the SEP Offset Amount to the Third-Party Administrator and comply with all other provisions of this SEP.

## **2. Performance Schedule**

Within 30 days after the effective date of this Agreed Order, the Respondent must contribute the SEP Offset Amount to the Third-Party Administrator. The Respondent shall make the check payable to **Coastal Bend Bays & Estuaries Program SEP** and shall mail the contribution with a copy of the Agreed Order to:

Coastal Bend Bays & Estuaries Program, Inc.  
Attention: Leo Trevino, Deputy Executive Director  
1305 North Shoreline Boulevard, Suite 205  
Corpus Christi, Texas 78401-1500

## **3. Records and Reporting**

Concurrent with the payment of the SEP Offset Amount, the Respondent shall provide the Enforcement SEP Coordinator with a copy of the check and transmittal letter indicating full payment of the SEP Offset Amount to the Third-Party Administrator. The Respondent shall mail a copy of the check and transmittal letter to:

Texas Commission on Environmental Quality  
Enforcement Division  
Attention: SEP Coordinator, MC 219  
P.O. Box 13087  
Austin, Texas 78711-3087

## **4. Failure to Fully Perform**

If the Respondent does not perform its obligations under this Attachment A, including full expenditure of the SEP Offset Amount and submittal of the required reporting described in Sections 2 and 3 above, the ED may require immediate payment of all or part of the SEP Offset Amount.

In the event the ED determines that the Respondent failed to fully implement and complete the Project, the Respondent shall remit payment for all or a portion of the SEP Offset Amount, as determined by the ED, and as set forth in the attached Agreed Order. After receiving notice of failure to complete the SEP, the Respondent shall include the docket number of the attached Agreed Order and a note that the enclosed payment is for the reimbursement of a SEP, shall make the check payable to "Texas Commission on Environmental Quality," and shall mail it to:

City of Portland  
Agreed Order - Attachment A

Texas Commission on Environmental Quality  
Litigation Division  
Attention: SEP Coordinator, MC 175  
P.O. Box 13087  
Austin, Texas 78711-3087

**5. Publicity**

Any public statements concerning this SEP and/or project, made by or on behalf of the Respondent must include a clear statement that **the project was performed as part of the settlement of an enforcement action brought by the TCEQ**. Such statements include advertising, public relations, and press releases.

**6. Clean Texas Program**

The Respondent shall not include this SEP in any application made to TCEQ under the "Clean Texas" (or any successor) program(s). Similarly, the Respondent may not seek recognition for this contribution in any other state or federal regulatory program.

**7. Other SEPs by TCEQ or Other Agencies**

The SEP Offset Amount identified in this Attachment A and in the attached Agreed Order has not been, and shall not be, included as a SEP for the Respondent under any other Agreed Order negotiated with the TCEQ or any other agency of the state or federal government.